



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1996

Mr. Richard Ybarra
Assistant Attorney General
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0144

Dear Mr. Ybarra:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37559.

The Office of the Attorney General received a request for the following documents relating to Materials Recovery Enterprises, Ovalo, Texas, Industrial Solid Waste Registration No. 39038:

- 1) All enforcement-type documents which the Attorney General's Office has issued concerning the above-referenced site;
- 2) Any documents concerning investigation(s) that the Attorney General's Office may have conducted concerning the above-referenced site;
- 3) Any and all Orders, Directives and/or Consent Agreements issued from the Attorney General's Office concerning the above-referenced site; and
- 4) Any and all correspondence to and from the Attorney General's Office and W.R. Grace (Cryovac Division) concerning the above-referenced site.

You indicate that you are providing the requestor access to certain documents but maintain that much of the requested information is excepted from required public disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.

You have submitted for our review 78 pages of documents you claim are privileged under the above exceptions. You claim that each of these pages is excepted from disclosure under sections 552.101 and 552.107. You also claim that pages 2 through 60 and 65 through 78 are additionally excepted from disclosure under section 552.111. We have considered the exceptions you raise and have reviewed the documents at issue.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Although you claim that section 552.101 excepts some of the information from disclosure pursuant to the attorney-client privilege, the attorney-client privilege is properly claimed under section 552.107. Open Records Decision No. 574 (1990) at 2.

We also note that you claim that some of the information is protected as attorney "work product." However, in order for information to be protected as attorney work product under chapter 552 of the Government Code, it must be shown that the information relates to pending or anticipated litigation within the meaning of section 552.103, the "litigation exception." As you have not claimed section 552.103, we do not consider as valid this assertion of the work product exemption.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* From our review of the documents, we find that much of the information does not reveal the client's communications nor does it reveal the attorney's legal opinion or advice. This information may not be withheld under section 552.107(1). We have marked the documents to indicate what information may be withheld under section 552.107(1). You may not withhold the remainder of the information.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to

policy issues. *Id.* at 5. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* We do not find any information which consists of advice, recommendations, opinions, or other material which reflects the policymaking processes of the governmental body. Consequently, you may not rely on this exception to withhold any of the requested information.

In conclusion, you may withhold the marked information under section 552.107. The remainder of the information must be released to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 37559

Enclosures: Marked documents

cc: Ms. Roseanne Puppo
Legal Assistant
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(w/o enclosures)